

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. RICHARD C. WESLEY,
Circuit Judges.

Leze Gjondrekaj, Ambroz Gjondrekaj, Leonard Gjondrekaj,
Ronald Gjondrekaj, David Gjondrekaj,

Petitioners,

v.

No. 05-5804-ag
NAC

Alberto R. Gonzales, Attorney General of the United States,

Respondent.

FOR PETITIONER: Kai W. De Graaf, New York, New York..

FOR RESPONDENT: Matthew H. Meade, United States Attorney, Steven K. Sharpe,
Assistant United States Attorney, Cheyenne, Wyoming.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of

1 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
2 petition for review is GRANTED, the BIA’s decision is VACATED, and the case is
3 REMANDED to the BIA.

4 Leze Gjondrekaj, through counsel, petitions for review of the BIA decision denying her
5 motion to reopen the BIA order adopting and affirming Immigration Judge (“IJ”) Alan
6 Vomacka’s denial of her application for asylum, withholding of removal, and relief under the
7 Convention Against Torture. We assume the parties’ familiarity with the underlying facts and
8 procedural history of the case.

9 This Court reviews the BIA’s denial of a motion to reopen or reconsider for abuse of
10 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*
11 *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006).

12 An alien is limited to one motion to reopen exclusion or deportation proceedings. *See* 8
13 C.F.R. § 1003.2(c)(2) (2005). This motion must be filed within ninety days of the final
14 administrative decision. 8 U.S.C. § 1229a(c)(7)(C) (2005); 8 C.F.R. § 1003.2(c)(2) (2005).
15 Because the BIA issued Gjondrekaj’s final order of removal on April 21, 2003, a motion to
16 reopen would have been timely until July 21, 2003. *See* 8 C.F.R. § 1003.2(c)(2) (2005).
17 Gjondrekaj’s motion, filed on July 25, 2005, was over two years out of time. *Id.* A motion that
18 does not comply with the time and numerical limitations can only be brought where the alien can
19 establish one of four limited regulatory exceptions, none of which are applicable here. *See* 8
20 C.F.R. § 1003.2(c)(3) (2005). The deadline for filing a motion to reopen based on ineffective
21 assistance of counsel may be equitably tolled in certain circumstances. *Zhao v. INS*, — F3d. —,
22 2006 WL 1681102 at *3 (2d Cir. June 20, 2006); *Iavorski v. INS*, 232 F.3d 124, 134–35 (2d Cir.

2000). A motion to reopen for the purposes of reissuing a previous decision is treated as a motion to reopen. *See Zhao*, 2006 WL 1681102 at *2.

In denying Gjondrekaj's motion to reopen, the BIA briefly summarized the procedural history of the case, and then stated, "Counsel does not cite any case law or other persuasive authority to support his request that we reissue our decision and the DHS has filed a response in opposition to the instant motion."

The BIA's failure to address Gjondrekaj's ineffective assistance/due process argument was an abuse of discretion. The BIA has an obligation to consider the "record as a whole," and it may be an abuse of discretion to deny a motion to reopen without addressing "all the factors relevant to [a] petitioner's claim." *Ke Zhen Zhao*, 265 F.3d at 97. There may also be an abuse of discretion when the BIA denies a motion without providing a sufficient explanation, or issues only summary or conclusory statements. *Kaur*, 413 F.3d at 233-34. Gjondrekaj presented nearly four pages of argument supporting her ineffective assistance/due process claim, citing case law and statutory authority. The BIA's one-sentence denial of Gjondrekaj's motion stating that she failed to present any case law or persuasive authority was inadequate.

____ For the foregoing reasons, the petition for review is GRANTED, the BIA's decision is VACATED, and the case is REMANDED to the BIA for further proceedings consistent with this order. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By:_____